

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 1509 & 1510
91ST GENERAL ASSEMBLY

Reported from the Committee on Urban Affairs, March 18, 2002, with recommendation that the House Committee Substitute for House Bill Nos. 1509 & 1510 Do Pass.

TED WEDEL, Chief Clerk

3954L.02C

AN ACT

To repeal sections 86.370, 86.398, 86.447, 86.600, 86.671, and 86.745, RSMo, and to enact in lieu thereof eleven new sections relating to police retirement systems.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 86.370, 86.398, 86.447, 86.600, 86.671, and 86.745, RSMo, are
2 repealed and eleven new sections enacted in lieu thereof, to be known as sections 86.370, 86.374,
3 86.398, 86.434, 86.444, 86.447, 86.600, 86.611, 86.665, 86.671, and 86.745, to read as follows:

86.370. The following words and phrases as used in sections 86.370 to 86.497, unless
2 a different meaning is plainly required by the context, shall have the following meanings, and
3 the use of masculine gender shall include the feminine:

4 (1) "Accumulated contributions", the sum of all amounts deducted from the
5 compensation of a member and paid to the retirement board, together with all amounts paid to
6 the retirement board by a member or by a member's beneficiary, for the purchase of prior service
7 credits or any other purpose permitted under sections 86.370 to 86.497;

8 (2) "Beneficiary", any person in receipt of pension or other benefit as provided in
9 sections 86.370 to 86.497;

10 (3) "Board of police commissioners", any board composed of police commissioners and
11 any other officials or boards authorized by law to employ and manage an organized police force
12 in the cities;

13 (4) "City" or "cities", any city which now has or may hereafter have a population of more
14 than three hundred thousand and less than seven hundred thousand inhabitants;

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 (5) "Compensation", whenever used in connection with members of the police retirement
16 system created by sections 86.370 to 86.497, and whether used solely or as part of another
17 defined term, the regular compensation which a member would earn during one year on the basis
18 of the stated compensation for his rank and position, and therefore excluding any overtime pay,
19 meal and travel expenses, uniform or other clothing allowances, any sick leave or vacation
20 entitlements accrued from prior years, college incentive or skill incentive allowances and any
21 other allowances available only to particular individuals and not a part of the base stated
22 compensation for all persons holding the given rank and position; **but notwithstanding the**
23 **foregoing, compensation for any year for any member shall not exceed the amount**
24 **permitted to be taken into account under Section 401(a)(17) of the Internal Revenue Code**
25 **as applicable to such year;**

26 (6) "Creditable service", prior service plus membership service as provided in section
27 86.423;

28 (7) "Final compensation", the average annual compensation of a member during his
29 service if less than two years, or the twenty-four months of his service for which he or she
30 received the highest salary whether consecutive or otherwise. In computing the average annual
31 compensation of a member under this subdivision, no compensation received for service which
32 occurred after the thirtieth full year of membership service and no compensation attributable to
33 any time a member was suspended from service without pay shall be included. For any period
34 of time when a member is paid on a frequency other than monthly, the member's salary for such
35 period shall be deemed to be the monthly equivalent of the member's annual rate of
36 compensation for such period;

37 (8) "Fiscal year", the fiscal year of the cities;

38 (9) **"Internal Revenue Code", the United States Internal Revenue Code of 1986, as**
39 **amended;**

40 (10) "Medical board", not less than one nor more than three physicians appointed by the
41 retirement board to arrange for and conduct medical examinations as directed by the retirement
42 board;

43 [(10)] (11) "Member", a member of the police retirement system as defined in section
44 86.380;

45 [(11)] (12) "Membership service", all service rendered as a policeman for compensation
46 after June 15, 1946, excluding all probationary service of six months or less served prior to May
47 1, 1951;

48 [(12)] (13) "Pension", annual payments for life, payable monthly, beginning with the date
49 of retirement and ending with death; if the total of such monthly payments plus benefits pursuant
50 to section 86.447 is less than the total of the member's accumulated contributions, the excess of

51 such accumulated contributions over the total of such monthly payments shall be paid in one sum
52 to the beneficiary named by the member;

53 [(13)] (14) "Pension fund", the fund resulting from contributions made thereto by the
54 cities affected by sections 86.370 to 86.497 and by the members of the police retirement system;

55 [(14)] (15) "Policeman", entitled to membership in the police retirement system created
56 by sections 86.370 to 86.497, is an officer or member of the police department of the cities
57 employed for compensation by the boards of police commissioners of the cities for police duty
58 and includes the chief of police, lieutenant colonels, majors, superintendents, captains,
59 lieutenants, sergeants, corporals, detectives, patrolmen, supervisors, technicians, radio operators,
60 radio dispatchers, jailers, and matrons, but does not include any police commissioner or members
61 of the police reserve corps, or special officers appointed to serve at elections, or temporary police
62 appointed at school crossings or special officers appointed to serve during emergencies, or
63 anyone employed in a clerical or other capacity not involving police duties; except that any
64 policeman as herein defined, who is assigned to the performance of other duties for the police
65 departments of the cities, by reason of personal injury by accident or disability arising out of and
66 in the course of his employment as a policeman, shall be and remain a member of the police
67 retirement system without regard to the duties performed under such assignment; in case of
68 dispute as to whether any person is a policeman qualified for membership in the retirement
69 system, the decision of the board of police commissioners shall be final;

70 [(15)] (16) "Retirement board", the board provided in section 86.393 to administer the
71 retirement system;

72 [(16)] (17) "Retirement system", the police retirement system of the cities as defined in
73 section 86.373.

**86.374. 1. The retirement board shall administer this retirement system in a
2 manner as to retain at all times qualified status under Section 401(a) of the Internal
3 Revenue Code, and shall adopt as policy, which shall constitute a part of the system under
4 sections 86.370 to 86.497, any provisions that may become required to maintain such status
5 provided that:**

6 (1) The board shall not adopt any policy that would impose an increase in the
7 contributions required of the applicable city without the consent of the city; and

8 (2) Any policy adopted by the board in contravention of any provision in the
9 statutes shall remain valid only until the close of the next regular session of the general
10 assembly that convenes after the adoption of the policy, unless the statutes are amended
11 during the session to adopt and incorporate the policy within the statutes.

12 **2. The retirement board shall hold in trust the assets of this retirement system for
13 the exclusive benefit of the members and their beneficiaries and for defraying reasonable**

14 administrative expenses of the system. No part of the assets shall, at any time prior to the
15 satisfaction of all liabilities with respect to members and their beneficiaries, be used for or
16 diverted to any purpose other than such exclusive benefit or to any purpose inconsistent
17 with sections 86.370 to 86.497.

18 3. A member's benefit shall be one hundred percent vested and nonforfeitable upon
19 the member's attainment of normal retirement age, which shall be the earlier of:

20 (1) Completing of twenty-five years of service;

21 (2) Age sixty if the member has completed at least ten years of creditable service;

22 (3) Age seventy without regard to years of service; or

23 (4) To the extent funded, upon the termination of the system established under
24 sections 86.370 to 86.497 or any partial termination that affects the member or any
25 complete discontinuance of contributions by the city to the system.

26
27 Amounts representing forfeited nonvested benefits of terminated members may not be used
28 to increase benefits payable from the system but may be used to reduce contributions for
29 future plan years.

30 4. Distribution of benefits shall begin not later than April first of the year following
31 the calendar year during which the member becomes seventy and one-half years of age and
32 shall otherwise conform to Section 401(a)(9) of the Internal Revenue Code.

33 5. A member or beneficiary of a member shall not accrue a service retirement
34 annuity, disability retirement annuity, death benefit, whether death occurs in the line of
35 duty or otherwise, or any other benefit under sections 86.370 to 86.497 in excess of the
36 benefit limits applicable to the fund under Section 415 of the Internal Revenue Code. The
37 retirement board shall reduce the amount of any benefit that exceeds those limits by the
38 amount of the excess. If the total benefits under this retirement system and the benefits
39 and contributions to which any member is entitled under any other qualified plan or plans
40 maintained by the board of police commissioners that employs the member would
41 otherwise exceed the applicable limits under Section 415 of the Internal Revenue Code, the
42 benefits the member would otherwise receive from this retirement system shall be reduced
43 to the extent necessary to enable the benefits to comply with Section 415 of the Internal
44 Revenue Code.

45 6. The total salary taken into account for any purpose for any member of this
46 retirement system shall not exceed two hundred thousand dollars per year, subject to
47 periodic adjustments in accordance with guidelines provided by the United States
48 Secretary of Treasury, and shall not exceed such other limits as may be applicable at any
49 given time under Section 401(a)(17) of the Internal Revenue Code.

50 **7. If the amount of any benefit is to be determined on the basis of actuarial**
51 **assumptions that are not otherwise specifically set forth for that purpose in sections 86.370**
52 **to 86.497, the actuarial assumptions to be used are those earnings and mortality**
53 **assumptions being used on the date of the determination by the retirement system's**
54 **actuary and approved by the retirement board. The actuarial assumptions being used at**
55 **any particular time shall be attached as an addendum to a copy of the retirement system**
56 **that is maintained by the retirement board and shall be treated for all purposes as a part**
57 **of sections 86.370 to 86.497. The actuarial assumptions may be changed by the retirement**
58 **system's actuary at any time if approved by the retirement board, but a change in actuarial**
59 **assumptions shall not result in any decrease in benefits accrued as of the effective date of**
60 **the change.**

61 **8. Any member or beneficiary who is entitled to receive any distribution that is an**
62 **eligible rollover distribution, as defined by Section 402(c)(4) of the Internal Revenue Code,**
63 **is entitled to have that distribution transferred directly to another eligible retirement plan**
64 **of the member's or beneficiary's choice on providing direction to the secretary of this**
65 **retirement system regarding that transfer in accordance with procedures established by**
66 **the retirement board.**

67 **9. For all distributions made after December 31, 2001:**

68 **(1) For the purposes of subsection 8 of this section, an eligible retirement plan shall**
69 **also mean an annuity contract described in Section 403(b) of the Internal Revenue Code**
70 **and an eligible plan under Section 457(b) of the Internal Revenue Code which is**
71 **maintained by a state, political subdivision of a state, or any agency or instrumentality of**
72 **a state or political subdivision of a state and which agrees to separately account for**
73 **amounts transferred into such plan from this retirement system. The definition of eligible**
74 **retirement plan shall also apply in the case of a distribution to a surviving spouse or to a**
75 **spouse or former spouse who is the alternate payee under a qualified domestic relations**
76 **order, as defined in Section 414(p) of the Internal Revenue Code; and**

77 **(2) For the purposes of subsection 8 of this section, a portion of a distribution shall**
78 **not fail to be an eligible rollover distribution merely because the portion consists of after-**
79 **tax employee contributions which are not includable in gross income. However, such**
80 **portion may be paid only to an individual retirement account or annuity described in**
81 **Section 408(a) or 408(b) of the Internal Revenue Code, or to a qualified defined**
82 **contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that**
83 **agrees to separately account for amounts so transferred, including separately accounting**
84 **for the portion of such distribution that is includable in gross income and the portion of**
85 **such distribution that is not includable.**

86.398. 1. **The retirement board may purchase with retirement system assets from one or more insurers licensed to do business in this state one or more insurance policies that provide for reimbursement of this retirement system and any trustee, member of the retirement board, officer, or employee of the retirement system for liability imposed or damages because of an alleged act, error, or omission committed in the trustee's, board member's, officer's, or employee's capacity as a fiduciary, officer, or employee of the retirement system and for costs and expenses, including attorney fees incurred as a trustee, board member, officer, or employee in defense of a claim for an alleged act, error, or omission, as long as the insurance policy does not provide for reimbursement of a trustee, board member, officer, or employee for liability imposed or expenses incurred because of the trustee's, board member's, officer's, or employee's personal dishonesty, fraud, lack of good faith, or intentional failure to act prudently.**

2. If the insurance coverage described in subsection 1 of this section is insufficient or is not in effect, the retirement board may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that [he] **the person** is or was a member of the retirement board, or is or was serving at the request of the retirement board in the capacity which caused [his] **the person's** relationship to such action, suit or proceeding, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by [him] **the person** in connection with such action, suit or proceeding, if [he] **the person** acted in good faith and without willful malfeasance, and, with respect to any criminal action or proceeding, had reasonable cause to believe [his] **the person's** conduct was lawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, or, with respect to any criminal action or proceeding, that [he] **such person** did not have reasonable cause to believe that [his] **the relevant** conduct was lawful.

[2.] **3.** To the extent that a member of the retirement board has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in [subsection] **subsections 1 and 2** of this section, or in defense of any claim, issue or matter therein, [he] **the person** shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred [by him] in connection with the action, suit or proceeding **that are not covered by the insurance described in subsection 1 of this section.**

[3.] **4.** Any indemnification under [subsection 1 of] this section, unless ordered by a court, shall be made by the retirement board only as authorized in each specific case upon a determination that indemnification of [a member of the retirement board] **any person**

37 **potentially entitled to indemnification hereunder** is proper in the circumstances because [he]
38 **the person** has met the applicable standard of conduct set forth in this section. The
39 determination shall be made by the retirement board by a majority vote of a quorum consisting
40 of members of the retirement board who are not parties to the action, suit or proceeding, or if
41 such a quorum is not obtainable, or even if obtainable a quorum of disinterested members of the
42 retirement board so directs, by independent legal counsel in a written opinion. Such legal
43 counsel may but need not be counsel to the retirement system.

44 [4.] **5.** Expenses incurred in defending a civil or criminal action, suit or proceeding may
45 be paid by the retirement board in advance of the final disposition of the action, suit or
46 proceeding as authorized by the retirement board in the specific case upon receipt of an
47 undertaking by or on behalf of the [member of the retirement board] **person potentially entitled**
48 **to indemnification hereunder** to repay such amount unless it shall ultimately be determined that
49 [he] **the person** is entitled to be indemnified by the retirement board as authorized in this section.

86.434. 1. Any member entitled to commence a pension pursuant to section 86.433
2 **with twenty-six years or more of creditable service may elect an optional distribution under**
3 **the partial lump-sum option plan provided in this section if the member:**

4 (1) **Notifies the retirement system in writing of the member's retirement date at**
5 **least ninety days in advance and requests an explanation of the member's rights pursuant**
6 **to this section; and**

7 (2) **Notifies the retirement system of the member's election at least thirty days in**
8 **advance of the retirement date.**

9
10 **Following the receipt of an initial notice of a member's retirement date and request for an**
11 **explanation pursuant to this subsection, the retirement system shall, at least sixty days in**
12 **advance of the retirement date, provide the member with a written explanation of the**
13 **member's rights pursuant to this section and of the amount by which the member's regular**
14 **monthly base pension would be reduced in the event of the member's election of any of the**
15 **options available to the member pursuant to this section.**

16 **2. A member entitled to make an election pursuant to this section may elect to**
17 **receive a lump-sum distribution with the member's initial monthly pension payment**
18 **pursuant to section 86.433, subject to all the terms of this section. The member may elect**
19 **the amount of the member's lump-sum distribution from one, but not more than one of the**
20 **following options for which the member qualifies:**

21 (1) **A member with twenty-six or more years of creditable service may elect a lump-**
22 **sum amount equal to twelve times the initial monthly base pension the member would**
23 **receive if no election were made under this section;**

24 (2) A member with twenty-seven or more years of creditable service may elect a
25 lump-sum amount equal to twenty-four times the initial monthly base pension the member
26 would receive if no election were made pursuant to this section; or

27 (3) A member with twenty-eight or more years of creditable service may elect a
28 lump-sum amount equal to thirty-six times the initial monthly base pension the member
29 would receive if no election were made pursuant to this section.

30 3. When a member makes an election to receive a lump-sum distribution pursuant
31 to this section, the base pension which the member would have received in the absence of
32 the election shall be reduced on an actuarially equivalent basis to reflect the payment of
33 the lump-sum distribution and the reduced base pension shall be the member's base
34 pension thereafter for all purposes in relation to base pension amounts pursuant to sections
35 86.370 to 86.497.

36 4. An election pursuant to this section to receive a lump-sum distribution and
37 reduced monthly base pension shall be void if the member dies before retirement and all
38 amounts due to a surviving spouse or other beneficiary of the member shall be determined
39 without regard to the election.

 86.444. 1. Any member who retired prior to August 28, 2000, and any member
2 whose pension is payable pursuant to section 86.450 or 86.457 and who retired after
3 August 28, 2000, but prior to August 28, 2001, may receive in each year beginning August
4 29, 2002, in addition to the member's base pension, an equalizing cost-of-living adjustment
5 not to exceed an aggregate of twenty-five percent of the member's base pension, provided
6 the retirement system shall remain actuarially sound.

7 2. The equalizing cost-of-living adjustment provided by this section shall be an
8 increase computed each year on the base pension by the retirement board in an amount,
9 if any, that the board in its discretion determines to be satisfactory. The cumulative
10 aggregate amount of equalizing cost of living adjustments pursuant to this section shall not
11 exceed twenty-five percent of the amount of the member's base pension.

12 3. In determining and granting the equalizing cost-of-living adjustments, the
13 retirement board shall adopt rules to effectuate this section, including the manner of
14 computation of the adjustments and their effective dates. The retirement board shall
15 annually determine the adjustments to be made and the date for granting such
16 adjustments. The board may apply the adjustments in full to members who retired during
17 the year prior to the adjustments but who have not been retired for one full year and to the
18 surviving spouse or children of a member who died during the year prior to the
19 adjustments.

20 4. Equalizing cost-of-living adjustments pursuant to this section shall increase the

21 **base pension of the recipient member, effective with the effective date of each increase**
22 **pursuant to this section, for all purposes pursuant to sections 86.370 to 86.497.**

23 **5. For the purposes of this section, the term "member" shall include a surviving**
24 **spouse entitled to pension benefits from this retirement system and any children of the**
25 **member who are entitled to receive part or all of the pension which would be received by**
26 **a surviving spouse if living. The right to an equalizing cost of living adjustment pursuant**
27 **to this section for a surviving spouse or children shall be determined by the retirement date**
28 **of the member through whose account the spouse's or children's rights are derived.**

29 **6. For purposes of this section, the term "base pension", means:**

30 **(1) For a member who retired prior to August 28, 2000, the member's base pension**
31 **as of August 28, 2000; or**

32 **(2) For a member whose pension is payable pursuant to section 86.450 or 86.457**
33 **and who retired after August 28, 2000, but prior to August 28, 2001, the member's base**
34 **pension as of August 28, 2001.**

35 **7. The determination of whether the retirement pension system will remain**
36 **actuarially sound shall be made at or before the time any equalizing cost-of-living**
37 **adjustment is granted. If at any time the retirement pension system becomes actuarially**
38 **unsound, pension payments shall continue as adjusted by the equalizing cost of living**
39 **adjustment increases that are granted. A member of the retirement board shall have no**
40 **personal liability for granting or declining the increases pursuant to this section if the**
41 **member in good faith relied and acted upon advice of a qualified actuary as to the**
42 **soundness of the retirement system.**

86.447. 1. Upon receipt of the proper proofs of death of a member in service for any
2 reason whatever or of the death of a member after having been retired and pensioned, there shall
3 be paid, in addition to all other benefits but subject to subsection 7 of this section, the following:

4 **(1) If a member dies while in service, such member's surviving spouse, if any, shall be**
5 **paid a base pension equal to forty percent of the final compensation of such member, subject to**
6 **subsequent adjustments, if any, as provided in section 86.441;**

7 **(2) If a member retires or terminates service after August 28, 1999, and dies after**
8 **commencement of benefits pursuant to the provisions of sections 86.370 to 86.497, the member's**
9 **surviving spouse, if any, shall be paid a base pension equal to eighty percent of the pension being**
10 **received by such member, including cost-of-living adjustments to such pension but excluding**
11 **supplemental retirement benefits, at the time of such member's death, subject to subsequent**
12 **adjustments, if any, as provided in section 86.441;**

13 **(3) If a member retired or terminated service on or before August 28, 1999, and died**
14 **after August 28, 1999, and after commencement of benefits, such member's surviving spouse**

15 shall upon application to the retirement board, be appointed and employed by the retirement
16 board as a special consultant on the problems of retirement, aging and other matters, and upon
17 request of the retirement board shall give opinions and be available to give opinions in writing
18 or orally in response to such requests, as may be required. For such services, the surviving
19 spouse shall, beginning the later of August 28, 1999, or the time of such appointment under this
20 subsection, be compensated in such amount as shall make the benefits received by such surviving
21 spouse pursuant to this subsection equal to eighty percent of the pension being received by such
22 member, including cost-of-living adjustments to such pension but excluding supplemental
23 retirement benefits, at the time of such member's death, subject to subsequent adjustments, if
24 any, as provided in section 86.441;

25 (4) Upon the death of any member who is in service after August 28, 2000, and who
26 either had at least twenty-five years of creditable service or was retired or died as a result of an
27 injury or illness occurring in the line of duty or course of employment pursuant to section 86.450,
28 the surviving spouse's benefit provided pursuant to this subsection, without including any
29 supplemental retirement benefits paid such surviving spouse by this retirement system, shall not
30 be less than six hundred dollars per month. For any member who dies, retires or terminates
31 service on or before August 28, 2000, and who either had at least twenty-five years of creditable
32 service or was retired or died as a result of an injury or illness occurring in the line of duty or
33 course of employment pursuant to section 86.450, the surviving spouse shall upon application
34 to the retirement board be appointed by the retirement board as a special consultant on the
35 problems of retirement, aging and other matters, and upon request of the retirement board shall
36 give opinions and be available to give opinions in writing or orally in response to such requests,
37 as may be required. For such services, the surviving spouse shall, beginning the later of August
38 28, 2000, or the time the appointment is made pursuant to this subsection, be compensated in an
39 amount which without including supplemental retirement benefits provided by this system shall
40 be not less than six hundred dollars monthly. A pension benefit pursuant to this subdivision shall
41 be paid in lieu of any base pension as increased by cost-of-living adjustments granted pursuant
42 to section 86.441. The benefit pursuant to this subdivision shall not be subject to cost-of-living
43 adjustments, but shall be terminated and replaced by the base pension and cost-of-living
44 adjustments to which such spouse would otherwise be entitled at such time as the total base
45 pension and such adjustments exceed six hundred dollars monthly;

46 (5) Such member's child or children under the age of eighteen years at the time of the
47 member's decease shall be paid fifty dollars per month each, subject to adjustments, if any, as
48 provided in section 86.441, until he or she shall attain the age of eighteen years; however, each
49 such child who is or becomes a full-time student at an accredited educational institution shall
50 continue to receive payments hereunder for so long as such child shall remain such a full-time

51 student or shall be in a summer or other vacation period scheduled by the institution with intent
52 by such child, demonstrated to the satisfaction of the retirement board, to return to such full-time
53 student status upon the resumption of the institution's classes following such vacation period, but
54 in no event shall such payments be continued after such child shall attain the age of twenty-one
55 years except as hereinafter provided. Any child eighteen years of age or older, who is physically
56 or mentally incapacitated from wage earning, so long as such incapacity exists as certified by a
57 member of the medical board, shall be entitled to the same benefits as a child under the age of
58 eighteen;

59 (6) A funeral benefit of one thousand dollars.

60 2. For the purposes of this section, "commencement of benefits" shall begin, for any
61 benefit, at such time as all requirements have been met entitling the member to a payment of
62 such benefit at the next following payment date, disregarding advance notice periods required
63 by any paying agent for physical preparation of the payment, so that a member who dies between
64 the date all such requirements are met and the date when the system would have delivered such
65 member's initial payment shall be deemed to have commenced such benefit.

66 3. If there is no person qualified to receive a pension as a surviving spouse or if a
67 surviving spouse dies, the total amount which would be received by a qualified surviving spouse
68 or which is being received by the surviving spouse at the date of death of such surviving spouse
69 shall be added to the amounts received by and shall be divided among the children under the age
70 of eighteen years and the incapacitated children in equal shares. As each child attains the age
71 of eighteen years or has such incapacity removed, the total of the surviving spouse's pension shall
72 then be added to and divided among the remaining children, and when there is only one child
73 under the age of eighteen years or incapacitated, whether such child is the sole surviving child
74 of the member or the youngest child of several children, the total amount of the surviving
75 spouse's pension shall be paid to the child until such child reaches the age of eighteen years or
76 such incapacity is removed.

77 4. (1) The surviving spouse of a member who retired or died prior to August 28, 1997,
78 shall not be entitled to receive benefits or the payment of a pension pursuant to sections 86.370
79 to 86.497 unless marriage to the member occurred at least two years before the member's
80 retirement or at least two years before the death of the member while in service; provided, that
81 no benefits shall be denied pursuant to this subsection to the surviving spouse of a member
82 whose death occurred in the line of duty or from an occupational disease arising out of and in the
83 course of the member's employment.

84 (2) No surviving spouse of a member who retired or died while in service after August
85 28, 1997, and before August 28, 2000, shall be entitled to receive any benefits pursuant to this
86 section unless such spouse was married to the member at the time of the member's retirement or

87 death while in service.

88 (3) Any surviving spouse who would qualify for benefits pursuant to subdivision (1) or
89 (2) of this subsection and who has not remarried prior to August 28, 2000, but remarries
90 thereafter, shall upon application to the retirement board be appointed by the retirement board
91 as a special consultant on the problems of retirement, aging and other matters, and upon request
92 of the retirement board shall give opinions and be available to give opinions in writing or orally
93 in response to such requests, as may be required. For such services, such surviving spouse shall
94 be compensated in an amount equal to the benefits such spouse would have received pursuant
95 to sections 86.370 to 86.497 in the absence of such remarriage.

96 (4) No surviving spouse of a member who retires or dies in service after August 28,
97 2000, shall be entitled to receive any benefits pursuant to sections 86.370 to 86.497 unless such
98 spouse was married to the member at the time of the member's retirement or death in service.
99 Any surviving spouse who was married to such a member at the time of the member's retirement
100 or death in service shall be entitled to all benefits for surviving spouses pursuant to sections
101 86.370 to 86.497 for the life of such surviving spouse without regard to remarriage.

102 5. If no benefits are otherwise payable to a surviving spouse or child of a deceased
103 member, the member's accumulated contributions, to any extent not fully paid to such member
104 prior to the member's death or to the surviving spouse or child of such member, shall be paid in
105 one lump sum to the member's named beneficiary or, if none, to the member's estate.

106 6. For purposes of this section, a determination of whether a child of a member is
107 physically or mentally incapacitated from wage earning so that the child is entitled to benefits
108 under this section shall be made at the time of the member's death. If a child becomes
109 incapacitated after the member's death, or if a child's incapacity existing at the member's death
110 is removed and such child later becomes incapacitated again, such child shall not be entitled to
111 benefits as an incapacitated child under the provisions of this section. A child shall be deemed
112 incapacitated only for so long as the incapacity existing at the time of the member's death
113 continues.

114 7. Any beneficiary of benefits pursuant to sections [86.600 to 86.790] **86.370 to 86.497**
115 who becomes the surviving spouse of more than one member shall be paid all benefits due a
116 surviving spouse of that member whose entitlements produce the largest surviving spouse
117 benefits for such beneficiary but shall not be paid surviving spouse benefits as the surviving
118 spouse of more than one member.

2 86.600. As used in sections 86.600 to 86.790, unless a different meaning is plainly
2 required by the context, the following words and phrases mean:

3 (1) "Accumulated contributions", the sum of all amounts deducted from the
4 compensation of a member and paid to the retirement board, together with all amounts paid to

5 the retirement board by a member or by a member's beneficiary for the purchase of prior service
6 credits or any other purpose permitted under sections 86.600 to 86.790 in all cases with interest
7 thereon at a rate determined from time to time for such purpose by the retirement board;

8 (2) "Actuarial equivalent", a benefit of equal value when computed upon the basis of the
9 mortality tables and interest rate as shall be adopted by the retirement board;

10 (3) "Appointing authority", any person or group of persons having power by law to make
11 appointments to any position in the police departments of the cities;

12 (4) "Beneficiary", any person receiving a benefit from the retirement system as a result
13 of the death of a member;

14 (5) "Compensation", the basic wage or salary paid an employee for any period, excluding
15 bonuses, overtime pay, expense allowance, and other extraordinary compensation; **but not**
16 **withstanding the foregoing, compensation for any year for any member shall not exceed**
17 **the amount permitted to be taken into account under Section 401(a)(17) of the Internal**
18 **Revenue Code as applicable to such year;**

19 (6) "Creditable service", the period of service to which an employee, a former employee,
20 or a member is entitled, as prescribed by sections 86.600 to 86.790;

21 (7) "Employee", any regularly appointed civilian employee of the police departments of
22 the cities as specified in sections 86.600 to 86.790, who is not eligible to receive a pension from
23 the police pension system;

24 (8) "Employer", the police boards of the cities as specified in sections 86.600 to 86.790;

25 (9) "Final compensation", the average annual compensation of a member during his or
26 her service if less than two years, or the twenty-four months of his or her service for which he
27 or she received the highest salary whether consecutive or otherwise. In computing the average
28 annual compensation of a member under this subsection, no compensation attributable to any
29 time a member was suspended from service without pay shall be included. For any period of
30 time when a member is paid on a frequency other than monthly, the member's salary for such
31 period shall be deemed to be the monthly equivalent of the member's annual rate of
32 compensation for such period;

33 (10) **"Internal Revenue Code", the United States Internal Revenue Code of 1986**
34 **as amended;**

35 (11) "Medical board", the board of physicians chosen by the retirement board;

36 [(11)] (12) "Member", any member of the retirement system as provided by sections
37 86.600 to 86.790;

38 [(12)] (13) "Normal retirement", retirement from the service of the employer on or after
39 the normal retirement date;

40 [(13)] (14) "Operative date", the date this retirement system becomes operative;

41 [(14)] (15) "Pension", the annual payments for life which shall be payable in equal
42 monthly installments to a member or his or her spouse;

43 [(15)] (16) "Retirement board", the persons appointed or elected to be members of the
44 retirement board for civilian employees of police departments of the cities;

45 [(16)] (17) "Retirement system", the retirement system of the civilian employees of the
46 cities as specified in sections 86.600 to 86.790;

47 [(17)] (18) "Surviving spouse", the legally married wife or husband of a member
48 surviving the member's death.

**86.611. 1. The retirement board shall administer this retirement system in such
2 manner as to retain at all times qualified status under Section 401(a) of the Internal
3 Revenue Code and shall adopt as policy, which shall constitute a part of the system under
4 sections 86.600 to 86.790, any provisions that may become required to maintain such status,
5 provided that:**

6 (1) The board shall not adopt any policy that would impose an increase in the
7 contributions required of the applicable city without the consent of the city; and

8 (2) Any policy adopted by the board in contravention of any provision in the
9 statutes shall remain valid only until the close of the next regular session of the general
10 assembly that convenes after the adoption of the policy unless the statutes are amended
11 during the session to adopt and incorporate the policy within the statutes.

12 **2. The retirement board shall hold in trust the assets of this retirement system for
13 the exclusive benefit of the members and their beneficiaries and for defraying reasonable
14 administrative expenses of the system and no part of such assets shall at any time prior to
15 the satisfaction of all liabilities of members and their beneficiaries be used for or diverted
16 to any purpose other than the exclusive benefit of the members and their beneficiaries and
17 no part of the assets may be used for any purpose inconsistent with sections 86.600 to
18 86.790.**

19 **3. A member's benefit shall be one hundred percent vested and nonforfeitable upon
20 the member's attainment of normal retirement age, which shall be the earlier of:**

21 (1) The attaining of the age of sixty-five or the member's tenth anniversary of
22 employment, whichever is later;

23 (2) When the total sum of age and years of service equals or exceeds eighty; or

24 (3) To the extent funded, upon the termination of the system established under
25 sections 86.600 to 86.790 or any partial termination that affects the member or any
26 complete discontinuance of contribution by the city to the system.

27

28 **Amounts representing forfeited nonvested benefits of terminated members shall not be**

29 used to increase benefits payable from the system but may be used to reduce contributions
30 for future plan years.

31 **4. Distribution of benefits shall begin not later than April first of the year following**
32 **the calendar year when the member becomes seventy and one-half years of age and shall**
33 **otherwise conform to Section 401(a)(9) of the Internal Revenue Code.**

34 **5. A member or beneficiary of a member shall not accrue a service retirement**
35 **annuity, disability retirement annuity, death benefit whether death occurs in the line of**
36 **duty or otherwise, or any other benefit under sections 86.600 to 86.790 in excess of the**
37 **benefit limits applicable to the fund under Section 415 of the Internal Revenue Code. The**
38 **retirement board shall reduce the amount of any benefit that exceeds the limits of this**
39 **section by the amount of the excess. If the total benefits under this retirement system and**
40 **the benefits and contributions to which any member is entitled under any other qualified**
41 **plan or plans maintained by the board of police commissioners that employs the member**
42 **would otherwise exceed the applicable limits under Section 415 of the Internal Revenue**
43 **Code, the benefits the member would otherwise receive from this retirement system is**
44 **reduced to the extent necessary to enable the benefits to comply with Section 415 of the**
45 **Internal Revenue Code.**

46 **6. The total salary taken into account for any purpose for any member of this**
47 **retirement system shall not exceed two hundred thousand dollars per year, subject to**
48 **periodic adjustments in accordance with guidelines provided by the United States**
49 **Secretary of the Treasury and may not exceed such other limits as may be applicable at any**
50 **given time under Section 401(a)(17) of the Internal Revenue Code.**

51 **7. If the amount of any benefit is determined on the basis of actuarial assumptions**
52 **that are not specifically set forth for that purpose in sections 86.600 to 86.790, the actuarial**
53 **assumptions used are those earnings and mortality assumptions used on the date of the**
54 **determination by the retirement system's actuary and approved by the retirement board.**
55 **The actuarial assumptions used at any particular time shall be attached as an addendum**
56 **to a copy of the retirement system maintained by the retirement board and shall be treated**
57 **for all purposes as part of sections 86.600 to 86.790. The actuarial assumptions may be**
58 **changed by the retirement system's actuary at any time if the change is approved by the**
59 **retirement board, but a change in actuarial assumptions shall not result in any decrease**
60 **in benefits accrued as of the effective date of the change.**

61 **8. Any member or beneficiary who is entitled to receive any distribution that is an**
62 **eligible rollover distribution as defined by Section 402(c)(4) of the Internal Revenue Code**
63 **is entitled to have that distribution transferred directly to another eligible retirement plan**
64 **of the member's or beneficiary's choice on providing direction to the secretary of this**

65 retirement system regarding that transfer in accordance with procedures established by
66 the retirement board. With respect to distributions made after December 31, 2001:

67 (1) For the purposes of this section, an eligible retirement plan shall also mean an
68 annuity contract described in Section 403(b) of the Internal Revenue Code that is
69 maintained by a state, political subdivision of a state, or any agency or instrumentality of
70 a state or political subdivision of a state and which agrees to separately account for
71 amounts transferred into such plan from this retirement system. The definition for eligible
72 retirement plan shall also apply in the case of a distribution to a surviving spouse or to a
73 spouse or former spouse who is the alternate payee under a qualified domestic relations
74 order, as defined in Section 414(p) of the Internal Revenue Code; and

75 (2) For the purposes of this section, a portion of a distribution shall not fail to be
76 an eligible rollover distribution merely because the portion consists of after-tax employee
77 contributions which are not includable in gross income. However, such portion may be
78 paid only to an individual retirement account or annuity described in Section 408(a) or
79 408(b) of the Internal Revenue Code or to a qualified defined contribution plan described
80 in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account
81 for amounts so transferred, including separately accounting for the portion of the
82 distribution that is includable in gross income and the portion of the distribution that is
83 not includable.

86.665. 1. Any member entitled to commence a pension pursuant to section 86.650
2 or 86.660 may elect an optional distribution under the partial lump-sum option plan
3 provided in this section if the member:

4 (1) Notifies the retirement system in writing of the member's retirement date at
5 least ninety days in advance and requests an explanation of the member's rights pursuant
6 to this section; and

7 (2) Notifies the retirement system of the member's election hereunder at least thirty
8 days in advance of the retirement date.

9
10 Following receipt of an initial notice of a member's retirement date and request for an
11 explanation pursuant to this section, the retirement system shall, at least sixty days in
12 advance of the retirement date, provide the member a written explanation of the member's
13 rights pursuant to this section and of the amount by which the member's regular monthly
14 base pension would be reduced in the event of the member's election of any of the options
15 available to the member pursuant to this section.

16 2. A member entitled to make an election pursuant to this section may elect to
17 receive a lump-sum distribution with the member's initial monthly pension payment

18 pursuant to section 86.650 or 86.660, subject to all the terms of this section. The member
19 may elect the amount of the member's lump-sum distribution from one, but not more than
20 one of the following options for which the member qualifies:

21 (1) A member with one or more years of creditable service after the member's
22 eligible retirement date may elect a lump-sum amount equal to twelve times the initial
23 monthly base pension the member would receive if no election were made pursuant to this
24 section;

25 (2) A member with two or more years of creditable service after the member's
26 eligible retirement date may elect a lump-sum amount equal to twenty-four times the initial
27 monthly base pension the member would receive if no election were made pursuant to this
28 section; or

29 (3) A member with three or more years of creditable service after the member's
30 eligible retirement date may elect a lump-sum amount equal to thirty-six times the initial
31 monthly base pension the member would receive if no election were made pursuant to this
32 section.

33 3. As used in this section, the term "eligible retirement date", means the earliest
34 date on which the member could elect to retire and be entitled to receive a pension
35 pursuant to section 86.650 or 86.660

36 4. When a member makes an election to receive a lump-sum distribution pursuant
37 to this section, the base pension that the member would have received in the absence of an
38 election shall be reduced on an actuarially equivalent basis to reflect the payment of the
39 lump-sum distribution and the reduced base pension shall be the member's base pension
40 thereafter for all purposes relating to base pension amounts pursuant to sections 86.600 to
41 86.790.

42 5. If a member electing a lump-sum distribution pursuant to this section has elected
43 the optional annuity described in section 86.650, the calculation of the member's pension
44 shall be made in the following order:

45 (1) The amount of the member's normal pension pursuant to section 86.650 reduced
46 by any applicable reductions required pursuant to section 86.660;

47 (2) The amount of the member's normal pension determined pursuant to
48 subdivision (1) of this subsection reduced to the actuarially equivalent amount to produce
49 the optional form of annuity described in subsection 2 of section 86.650;

50 (3) The amount of reduced pension as determined pursuant to subdivision (2) of
51 this subsection reduced as required to produce an actuarially equivalent benefit in the
52 form of the lump-sum distribution option elected pursuant to this section and a remaining
53 monthly annuity to be paid to the member or paid to the surviving spouse of the member

54 **for the lifetime of the spouse without regard to remarriage on the basis that the annuity for**
55 **the member's spouse, if the spouse survives the member, shall be the same amount as the**
56 **annuity paid to the member.**

57 **6. An election pursuant to this section to receive a lump-sum distribution and**
58 **reduced monthly base pension is void if the member dies before retirement, and the**
59 **amounts due to a surviving spouse or beneficiary of the deceased member shall be**
60 **determined without regard to the election.**

86.671. 1. Any [period] **periodic** payment, excluding payments for medical treatment,
2 which may be paid or payable by the cities pursuant to the provisions of any workers'
3 compensation or similar law to a member or to the dependents of a member on account of any
4 disability or death shall be offset against any benefits payable to the recipient of the workers'
5 compensation payments from funds provided by the cities pursuant to the provisions of sections
6 86.600 to 86.790 on account of the same disability or death. In no event, however, shall the
7 amount paid from funds pursuant to the provisions of sections 86.600 to 86.790 be less than the
8 amount which represents the member's percentage, as defined in subsection 4 of this section, of
9 total benefits payable pursuant to sections 86.600 to 86.790, before any offset for workers'
10 compensation benefits.

11 2. Any lump sum amount, excluding payments for medical treatments, which may be
12 paid or payable by the cities pursuant to the provisions of any workers' compensation or similar
13 law to a member or to the dependents of a member on account of any disability or death shall be
14 offset against any benefits payable from funds provided by the cities pursuant to the provisions
15 of sections 86.600 to 86.790 on account of the same disability or death. The amounts by which
16 each periodic payment made pursuant to the provisions of sections 86.600 to 86.790 is offset or
17 reduced shall be computed as the periodic amount necessary to amortize as an annuity over the
18 period of time represented by the respective workers' compensation benefits the total amount of
19 the lump sum settlement received as a workers' compensation benefit by a beneficiary of the
20 retirement system. Such computation shall be based upon the same interest rate and mortality
21 assumptions as used for the retirement system at the time of such computation. In no event,
22 however, shall the amount paid from funds pursuant to the provisions of sections 86.600 to
23 86.790 be less than the amount which represents the member's percentage, as defined in
24 subsection 4 of this section, of total benefits payable pursuant to sections 86.600 to 86.790,
25 before any offset for workers' compensation benefits.

26 3. The retirement board shall adopt such rules and regulations as may be necessary to
27 effectuate the purposes of this section.

28 4. As used in this section, the term "member's percentage" shall be the fraction of which
29 the numerator is the percentage of compensation contributed by a working member to the

30 retirement pension system pursuant to section 86.760 during the pay period immediately
31 preceding such member's death or disability which created entitlement to benefits and the
32 denominator is the sum of percentages of a member's compensation contributed by a working
33 member and the city pursuant to section 86.760 to the retirement pension system during such pay
34 period. Such percentage shall identify the portion of any benefits due pursuant to the provisions
35 of sections 86.600 to 86.790 which is deemed to have been provided by the member's own
36 contributions.

86.745. 1. **The retirement board may purchase with retirement system assets from
2 one or more insurers licensed to do business in this state one or more insurance policies
3 that provide for reimbursement of this retirement system and any trustee, member of the
4 retirement board, officer, or employee of the retirement system for liability imposed or
5 damages because of an alleged act, error, or omission committed in the trustee's, board
6 member's, officer's, or employee's capacity as a fiduciary, officer, or employee of the
7 retirement system and for costs and expenses, including attorney fees incurred as a trustee,
8 board member, officer, or employee in defense of a claim for an alleged act, error, or
9 omission, as long as the insurance policy does not provide for reimbursement of a trustee,
10 board member, officer, or employee for liability imposed or expenses incurred because of
11 the trustee's, board member's, officer's, or employee's personal dishonesty, fraud, lack of
12 good faith, or intentional failure to act prudently.**

13 **2. If the insurance coverage described in subsection 1 of this section is insufficient**
14 **or is not in effect,** the retirement board may indemnify any person who was or is a party or is
15 threatened to be made a party to any threatened, pending or completed action, suit or proceeding,
16 whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a
17 member of the retirement board, or is or was serving at the request of the retirement board in the
18 capacity which caused [his] **the person's** relationship to such action, suit or proceeding, against
19 expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and
20 reasonably incurred by [him] **the person** in connection with such action, suit or proceeding, if
21 [he] **the person** acted in good faith and without willful malfeasance, and, with respect to any
22 criminal action or proceeding, had reasonable cause to believe [his] **the relevant** conduct was
23 lawful. The termination of any action, suit or proceeding by judgment, order, settlement,
24 conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a
25 presumption that the person did not act in good faith, or, with respect to any criminal action or
26 proceeding, that he did not have reasonable cause to believe that his conduct was lawful.

27 **[2.] 3. To the extent that a member of the retirement board has been successful on the**
28 **merits or otherwise in defense of any action, suit or proceeding referred to in [subsection]**
29 **subsections 1 and 2 of this section, or in defense of any claim, issue or matter therein, [he] the**

30 **person** shall be indemnified against expenses, including attorneys' fees, actually and reasonably
31 incurred [by him] in connection with the action, suit or proceeding **that are not covered by the**
32 **insurance described in subsection 1 of this section.**

33 [3.] **4.** Any indemnification under [subsection 1 of] this section, unless ordered by a
34 court, shall be made by the retirement board only as authorized in each specific case upon a
35 determination that indemnification of [the member of the retirement board] **any person**
36 **potentially entitled to indemnification hereunder** is proper in the circumstances because [he]
37 **the person** has met the applicable standard of conduct set forth in this section. The
38 determination shall be made by the retirement board by a majority vote of a quorum consisting
39 of members of the retirement board who are not parties to the action, suit or proceeding, or if
40 such a quorum is not obtainable, or even if obtainable a quorum of disinterested members of the
41 retirement board so directs, by independent legal counsel (who may but need not be counsel to
42 the retirement system) in a written opinion.

43 [4.] **5.** Expenses incurred in defending a civil or criminal action, suit or proceeding may
44 be paid by the retirement board in advance of the final disposition of the action, suit or
45 proceeding as authorized by the retirement board in the specific case upon receipt of an
46 undertaking by or on behalf of the [member of the retirement board] **person potentially entitled**
47 **to indemnification hereunder** to repay such amount unless it shall ultimately be determined that
48 [he] **the person** is entitled to be indemnified by the retirement board as authorized in this section.